



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

DECISION NO. 86-25

SUGAR RIVER EDUCATION ASSOCIATION, NEA-NH :
:
Complainant :
v. :
CLAREMONT SCHOOL BOARD :
:
Respondent :

CASE NO. T-0279:6

CLAREMONT SCHOOL DISTRICT :
:
Complainant :
v. :
SUGAR RIVER EDUCATION ASSOCIATION, NEA-NH :
:
Respondent :

CASE NO. T-0364

APPEARANCES

Representing the Sugar River Education Association, NEA-NH:

James Allmendinger, Esq., Counsel
Craig Farrell, NEA-NH Region III UniServ Director
Mary E. Gaul, NEA-NH Region III UniServ Director
Joseph Furtado, President, SREA
Rolf Tallberg, SREA
Alice Clay, SREA
Eleanor J. Sears, SREA
Harold Sears, SREA

Representing the School Board and District:

Jay C. Boynton, Esq., Counsel
Richard F. Waldo, Superintendent
Frank V. Daley, Asst. Superintendent
William Armstrong, School Board Member
Thomas Wansleben, School Board Member
George T. Caccavaro, Jr., Negotiator & School Board Member

BACKGROUND

On January 22, 1985, the Sugar River Education Association (Association) filed improper practice charges with PELRB (Board) alleging bad faith bargaining and other actions contrary to RSA 273-A by the Claremont School Board (District).

On February 4, 1985, the District filed improper practice charges against the Association for participation in job action contrary to RSA 273-A.

In addition to denying the bad faith bargaining charges, the District requested that in the alternative to an adversarial hearing, the Board assist the parties through some form of mediation and further requested dismissal of the charges.

The Association also denied violating 273-A, objected to the District's Motion to Dismiss and requested dismissal of job action charges filed.

In August of 1985, the Association requested a special hearing in an effort to present testimony from one witness who was soon to relocate some distance from N. H. The District objected to any hearing prior to start of school when all other participants would be available and again requested the Board conduct mediation in lieu of a formal hearing.

On August 13, 1985, the Board held a special meeting for the purpose of ascertaining the Association's witness' direct testimony and allow for cross-examination prior to his leaving the State. The Board also heard arguments on the District's request for mediation and denied the request.

The parties to this point had not shown a significant desire to cooperate and it was the Board's opinion that the Association was entitled under law to a hearing on the charges. The Association asserted that only a definitive statement by the Board could preclude similar events from occurring in future negotiations.

In September, the Association filed an Application for Subpoenas; Motion for Particulars; and, an Objection to the Motion to Consolidate. The District argued for consolidation, asserted that the subpoena request was unnecessary, and stated they had fully complied with the Board's rules.

A consolidated hearing was held on October 22, 1985 with all parties represented and continued until November 7, 1985 during which time the District filed an additional Motion to Dismiss due to the vagueness of the charges and because both parties were pursuing binding arbitration. Request for findings were filed at that time by the Association.

The Board took all motions under advisement and later denied all motions for dismissal finding that from October, 1985 through October 1984, the parties had bargained in good faith through mediation and factfinding in an effort to reach agreement. A tentative agreement was reached based on the factfinder's report and accepted by the District's School Board on a 4 to 3 vote. One member of the minority opinion, who at one time had been the District's negotiations spokesperson, publicly and actively campaigned against the adoption of the tentative agreement by the District's voters. The voters on November 17, 1984 at a special district meeting refused to appropriate money to fund the cost items contained in the tentatively agreed contract.

The negotiating teams met and reached agreement on November 29, 1984 to resubmit the factfinder's report to the School Board with the intention of again resubmitting it at another special district meeting, however, the report was not resubmitted at the December 5, 1984 meeting as previously agreed, following which the parties adopted an adversarial bargaining posture until an agreement was finally reached in early 1985.

During the period, December 1984 to January 1985, and during previous negotiations, both parties participated in attempts to persuade the other to reach an agreement.

FINDINGS OF FACT

- Individual contracts were sent to each teacher in April of 1984 for the school year starting in September of 1984 to which the Association objected as the individual contracts contained salaries and work hours. The collective bargaining agreement was to expire prior to the start of school and no agreement had been reached on a successor agreement.

The Board finds that individual teacher contracts are for the purpose of nominating teachers for continued employment and advising the District of the teacher's intention for the coming school year. ALL terms and conditions of employment for teachers in a bargaining unit are set forth in the collective bargaining agreement. To promote harmony among the work force, the individual contracts should have stated salary and work hours "as set forth in the collective bargaining agreement". Even if the parties did not reach agreement on a successor agreement, the terms and conditions of employment set forth in the previous agreement survive until the parties negotiate a change. In this case, the issue of individual contracts is a matter of style and not a violation of law.

- Another persuasive attempt was made by the Association members by a mass resignation from voluntary duties including accreditation and curriculum development. Following the November, 1984, District meeting, teachers individually and collectively responded to the successful campaign to defeat the appropriation of funds to cost items by resigning from voluntary committees and duties; arriving at their work place at exactly the proscribed time and departing at exactly the proscribed time; in short, the teachers took the position of non-cooperation, totally lacking harmony. The Board finds these actions contrary to the spirit of RSA 273-A, but not a violation of the letter of the law.

The teachers adopted the attitude that, "If I am ordered to do something, I will, and then I will file a grievance". The District took the position of not processing grievances. These positions can only be described as escalation in a battle of strong wills.

The Board finds that, even though expired, the contract contains a grievance mechanism and that procedure must be followed until such time as a change is negotiated to the original or expired procedure. In the "brinksmanship" between two strong wills in this instance, the District stepped over the line and committed an unfair labor practice by failing to honor the grievance procedure which the District acknowledges is still in effect on December 21, 1984 (see Association exhibit #16).

Another instance of escalation is when the teachers performed public protests, including a march in front of the Superintendent's office. The District's apparent response was to unilaterally suspend employee benefits, collectively bargained terms and conditions of employment (see Association exhibit #16). The notice of this unilateral change in terms and conditions of employment and the policy decision which generated this notice reached by the District, as reported in the School Board minutes, constitutes an unfair labor practice by breaching the collective bargaining agreement and refusing to negotiate in good faith.

Additionally, the District's stated position at the December 20, 1984 negotiating session that they had no authority to negotiate, but only the authority to present a single new proposal with no opportunity for counter-offers, constitutes bad faith bargaining and as such a violation of 273-A,

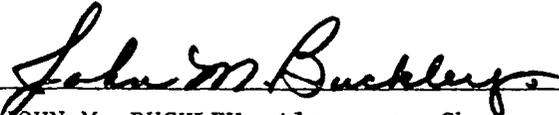
In this instant case, there exists a combatative and deleterious relationship. The parties, and particularly the District for reasons cited above, must recognize where the legal line lies and not cross it. Both parties, however, are guilty of violating the intent of RSA 273-A for not fostering harmonious and cooperative relations. As each party attempts to bring the other party around to its way of thinking or to submission, the intent of RSA 273-A is repeatedly violated.

DECISION AND ORDER

After review of the testimony and evidence presented, the Board finds the Claremont School Board and District guilty of unfair labor practices and ORDERS the Board and District to cease and desist from bad faith bargaining and unilateral changes in terms and conditions of employment.

The Board further finds the Claremont School Board and the Sugar River Education Association in violation of the intent of RSA 273-A and hereby ORDERS the parties to jointly submit a plan of action to PELRB within 90 days, but no later than July 1, 1986, outlining the course of action to be taken to ensure open communications as well as respect for the intent of the 273-A as well as the letter of the law.

Wherefore, the Public Employee Labor Relations Board retains jurisdiction in this matter.


JOHN M. BUCKLEY, Alternate Chairman
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 31st day of March, 1986.

By unanimous vote. Chairman Buckley presiding; members Seymour Osman and Russell Verney present and voting. Also present, Executive Director Evelyn C. LeBrun.